

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALEXANDER LEES,

Plaintiff,

v.

SINGSONG,

Defendant.

Case No. [19-cv-01603-HSG](#)

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND; DENYING MOTION FOR  
EXTENSION OF TIME**

Dkt. No. 7

**INTRODUCTION**

Plaintiff, an inmate at Pelican Bay State Prison, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging that Salinas Valley State Prison nurse Singsong was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Plaintiff has been granted leave to proceed *in forma pauperis* in a separate order. His complaint (Dkt. No. 10) is now before the Court for review under 28 U.S.C. § 1915A.

**DISCUSSION**

**A. Standard of Review**

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity, or from an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b) (1), (2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the

claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated; and (2) that the violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

## **B. Complaint**

Plaintiff states that SVSP RN Singsong ignored him when he was in need of medical care. Dkt. No. 10 at 3. Deliberate indifference to a prisoner’s serious medical needs violates the Eighth Amendment’s proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976). A “serious” medical need exists if the failure to treat a prisoner’s condition could result in further significant injury or the “unnecessary and wanton infliction of pain.” *McGuckin v. Smith*, 974 F.2d 1059, 1059 (9th Cir. 1992), *overruled in part on other grounds by WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (citing *Estelle*, 429 U.S. at 104). A prison official is deliberately indifferent if he knows that a prisoner faces a substantial risk of serious harm and disregards that risk by failing to take reasonable steps to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

However, the complaint will be dismissed with leave to amend because Plaintiff’s allegations fail to identify his medical need, specify how Defendant Singsong denied Plaintiff the necessary medical care, and when these events took place. The lack of detail prevents the Court from determining whether Defendant Singsong’s actions or inaction rose to the level of a constitutional violation, and also prevents Defendant Singsong from framing a response to the

1 complaint. The Court will grant Plaintiff leave to file an amended complaint. *See Lopez v. Smith*,  
2 203 F.3d 1122, 1130 (9th Cir. 2000) (“a district court should grant leave to amend even if no  
3 request to amend the pleading was made, unless it determines that the pleading could not possibly  
4 be cured by the allegation of other facts”) (citation and internal quotation marks omitted); *see also*  
5 *Ramirez v. Galaza*, 334 F.3d 850, 861 (9th Cir. 2003) (leave to amend “should be granted more  
6 liberally to *pro se* plaintiffs”) (citation omitted).

### 7 CONCLUSION


8 For the foregoing reasons, the complaint is dismissed with leave to amend to address the  
9 deficiency identified above. Within **twenty-eight (28) days** of the date of this order, Plaintiff shall  
10 file an amended complaint. The amended complaint must include the caption and civil case  
11 number used in this order, Case No. C 19-01603 HSG (PR) and the words “AMENDED  
12 COMPLAINT” on the first page. If using the court form complaint, Plaintiff must answer all the  
13 questions on the form in order for the action to proceed. Because an amended complaint  
14 completely replaces the previous complaints, Plaintiff must include in his amended complaint all  
15 the claims he wishes to present and all of the defendants he wishes to sue. *See Ferdik v. Bonzelet*,  
16 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from the prior  
17 complaint by reference.

18 **Failure to file an amended complaint in accordance with this order in the time**  
19 **provided will result in dismissal of this action without further notice to Plaintiff.**

20 The Clerk shall include two copies of the court’s complaint form with a copy of this order  
21 to Plaintiff.

22 **IT IS SO ORDERED.**

23 Dated: 6/5/2019

24   
25 HAYWOOD S. GILLIAM, JR.  
26 United States District Judge  
27  
28